

Introduced by Senator MachadoFebruary 21, 2008

An act to amend Section 1063.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1467, as introduced, Machado. Insurance: guarantee fund.

Existing law establishes the California Guarantee Association to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies. Existing law defines a "covered claim" for the purposes of the association's operations.

This bill would make a technical, nonsubstantive change in the definition of "covered claim."

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1063.1 of the Insurance Code is amended
- 2 to read:
- 3 1063.1. As used in this article:
- 4 (a) "Member insurer" means an insurer required to be a member
- 5 of the association in accordance with subdivision (a) of Section
- 6 1063, except and to the extent that the insurer is participating in
- 7 an insolvency program adopted by the United States government.
- 8 (b) "Insolvent insurer" means an insurer that was a member
- 9 insurer of the association, consistent with paragraph (11) of
- 10 subdivision (c), either at the time the policy was issued or when

1 the insured event occurred, and against which an order of
2 liquidation or receivership with a finding of insolvency has been
3 entered by a court of competent jurisdiction, or, in the case of the
4 State Compensation Insurance Fund, if a finding of insolvency is
5 made by a duly enacted legislative measure.

6 (c) (1) “Covered claims” means the obligations of an insolvent
7 insurer, including the obligation for unearned premiums, (A)
8 imposed by law and within the coverage of an insurance policy of
9 the insolvent insurer; (B) which were unpaid by the insolvent
10 insurer; (C) which are presented as a claim to the liquidator in this
11 state or to the association on or before the last date fixed for the
12 filing of claims in the domiciliary liquidating proceedings; (D)
13 which were incurred prior to the date coverage under the policy
14 terminated and prior to, on, or within 30 days after the date the
15 liquidator was appointed; (E) for which the assets of the insolvent
16 insurer are insufficient to discharge in full; (F) in the case of a
17 policy of workers’ compensation insurance, to provide workers’
18 compensation benefits under the workers’ compensation law of
19 this state; and (G) in the case of other classes of insurance if the
20 claimant or insured is a resident of this state at the time of the
21 insured occurrence, or the property from which the claim arises is
22 permanently located in this state.

23 (2) “Covered claims” also include the obligations assumed by
24 an assuming insurer from a ceding insurer where the assuming
25 insurer subsequently becomes an insolvent insurer if, at the time
26 of the insolvency of the assuming insurer, the ceding insurer is no
27 longer admitted to transact business in this state. Both the assuming
28 insurer and the ceding insurer shall have been member insurers at
29 the time the assumption was made. “Covered claims” under this
30 paragraph shall be required to satisfy the requirements of
31 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
32 the requirement that the claims be against policies of the insolvent
33 insurer. The association shall have a right to recover any deposit,
34 bond, or other assets that may have been required to be posted by
35 the ceding company to the extent of covered claim payments and
36 shall be subrogated to any rights the policyholders may have
37 against the ceding insurer.

38 (3) “Covered claims” does not include obligations arising from
39 the following:

40 (A) Life, annuity, health, or disability insurance.

1 (B) Mortgage guaranty, financial guaranty, or other forms of
2 insurance offering protection against investment risks.

3 (C) Fidelity or surety insurance including fidelity or surety
4 bonds, or any other bonding obligations.

5 (D) Credit insurance.

6 (E) Title insurance.

7 (F) Ocean marine insurance or ocean marine coverage under
8 any insurance policy including claims arising from the following:
9 the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor
10 Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any
11 other similar federal statutory enactment, or any endorsement or
12 policy affording protection and indemnity coverage.

13 (G) Any claims servicing agreement or insurance policy
14 providing retroactive insurance of a known loss or losses, except
15 a special excess workers' compensation policy issued pursuant to
16 subdivision (c) of Section 3702.8 of the Labor Code that covers
17 all or any part of workers' compensation liabilities of an employer
18 that is issued, or was previously issued, a certificate of consent to
19 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
20 Code.

21 (4) "Covered claims" does not include any obligations of the
22 insolvent insurer arising out of any reinsurance contracts, nor any
23 obligations incurred after the expiration date of the insurance policy
24 or after the insurance policy has been replaced by the insured or
25 canceled at the insured's request, or after the insurance policy has
26 been canceled by the association as provided in this chapter, or
27 after the insurance policy has been canceled by the liquidator, nor
28 any obligations to any state or to the federal government.

29 (5) "Covered claims" does not include any obligations to
30 insurers, insurance pools, or underwriting associations, nor their
31 claims for contribution, indemnity, or subrogation, equitable or
32 otherwise, except as otherwise provided in this chapter.

33 An insurer, insurance pool, or underwriting association may not
34 maintain, in its own name or in the name of its insured, any claim
35 or legal action against the insured of the insolvent insurer for
36 contribution, indemnity or by way of subrogation, except insofar
37 as, and to the extent only, that the claim exceeds the policy limits
38 of the insolvent insurer's policy. In those claims or legal actions,
39 the insured of the insolvent insurer is entitled to a credit or setoff
40 in the amount of the policy limits of the insolvent insurer's policy,

1 or in the amount of the limits remaining, where those limits have
2 been diminished by the payment of other claims.

3 (6) “Covered claims,” except in cases involving a claim for
4 workers’ compensation benefits or for unearned premiums, does
5 not include any claim in an amount of one hundred dollars (\$100)
6 or less, nor that portion of any claim that is in excess of any
7 applicable limits provided in the insurance policy issued by the
8 insolvent insurer.

9 (7) “Covered claims” does not include that portion of any claim,
10 other than a claim for workers’ compensation benefits, that is in
11 excess of five hundred thousand dollars (\$500,000).

12 (8) “Covered claims” does not include any amount awarded as
13 punitive or exemplary damages, nor any amount awarded by the
14 Workers’ Compensation Appeals Board pursuant to Section 5814
15 or 5814.5 because payment of compensation was unreasonably
16 delayed or refused by the insolvent insurer.

17 (9) “Covered claims” does not include (A) any claim to the
18 extent it is covered by any other insurance of a class covered by
19 this article available to the claimant or insured nor (B) any claim
20 by any person other than the original claimant under the insurance
21 policy in his or her own name, his or her assignee as the person
22 entitled thereto under a premium finance agreement as defined in
23 Section 673 and entered into prior to insolvency, *or* his or her
24 executor, administrator, guardian, or other personal representative
25 or trustee in bankruptcy and does not include any claim asserted
26 by an assignee or one claiming by right of subrogation, except as
27 otherwise provided in this chapter.

28 (10) “Covered claims” does not include any obligations arising
29 out of the issuance of an insurance policy written by the separate
30 division of the State Compensation Insurance Fund pursuant to
31 Sections 11802 and 11803.

32 (11) “Covered claims” does not include any obligations of the
33 insolvent insurer arising from any policy or contract of insurance
34 issued or renewed prior to the insolvent insurer’s admission to
35 transact insurance in the State of California.

36 (12) “Covered claims” does not include surplus deposits of
37 subscribers as defined in Section 1374.1.

38 (13) “Covered claims” shall also include obligations arising
39 under an insurance policy written to indemnify a permissibly
40 self-insured employer pursuant to subdivision (b) or (c) of Section

1 3700 of the Labor Code for its liability to pay workers'
2 compensation benefits in excess of a specific or aggregate retention,
3 provided, however, that for purposes of this article, those claims
4 shall not be considered workers' compensation claims and therefore
5 are subject to the per claim limit in paragraph (7) and any payments
6 and expenses related thereto shall be allocated to category (c) for
7 claims other than workers' compensation, homeowners, and
8 automobile, as provided in Section 1063.5.

9 These provisions shall apply to obligations arising under any
10 policy as described herein issued to a permissibly self-insured
11 employer or group of self-insured employers pursuant to Section
12 3700 of the Labor Code and notwithstanding any other provision
13 of the Insurance Code, those obligations shall be governed by this
14 provision in the event that the Self-Insurers' Security Fund is
15 ordered to assume the liabilities of a permissibly self-insured
16 employer or group of self-insured employers pursuant to Section
17 3701.5 of the Labor Code. The provisions of this paragraph apply
18 only to insurance policies written to indemnify a permissibly
19 self-insured employer or group of self-insured employers under
20 subdivision (b) or (c) of Section 3700, for its liability to pay
21 workers' compensation benefits in excess of a specific or aggregate
22 retention, and this paragraph does not apply to special excess
23 workers' compensation insurance policies unless issued pursuant
24 to authority granted in subdivision (c) of Section 3702.8 of the
25 Labor Code, and as provided for in subparagraph (G) of paragraph
26 (3) of subdivision (c). In addition, this paragraph does not apply
27 to any claims servicing agreement or insurance policy providing
28 retroactive insurance of a known loss or losses as are excluded in
29 subparagraph (G) of paragraph (3) of subdivision (c).

30 Each permissibility self-insured employer or group of
31 self-insured employers, or the Self-Insurers' Security Fund, shall,
32 to the extent required by the Labor Code, be responsible for paying,
33 adjusting, and defending each claim arising under policies of
34 insurance covered under this section, unless the benefits paid on
35 a claim exceed the specific or aggregate retention, in which case.

36 (A) If the benefits paid on the claim exceed the specific or
37 aggregate retention, and the policy requires the insurer to defend
38 and adjust the claim, the California Insurance Guarantee
39 Association (CIGA) shall be solely responsible for adjusting and
40 defending the claim, and shall make all payments due under the

1 claim, subject to the limitations and exclusions of this article with
2 regards to covered claims. As to each claim subject to this
3 paragraph, notwithstanding any other provisions of the Insurance
4 Code or the Labor Code, and regardless of whether the amount
5 paid by CIGA is adequate to discharge a claim obligation, neither
6 the self-insured employer, group of employers, nor the
7 Self-Insurers' Security Fund, shall have any obligation to pay
8 benefits over and above the specific or aggregate retention, except
9 as provided in subdivision (c).

10 (B) If the benefits paid on the claim exceed the specific or
11 aggregate retention, and the policy does not require the insurer to
12 defend and adjust the claim, the permissibility self-insured
13 employer or group of self-insured employers, or the Self-Insurers'
14 Security Fund, shall not have any further payment obligations with
15 respect to the claim, but shall continue defending and adjusting
16 the claim, and shall have the right, but not the obligation, in any
17 proceeding to assert all applicable statutory limitations and
18 exclusions as contained in this article with regard to the covered
19 claim. CIGA shall have the right, but not the obligation, to
20 intervene in any proceeding where the self-insured employer, group
21 of self-insured employers, or the Self-Insurers' Security Fund is
22 defending any such claim and shall be permitted to raise the
23 appropriate statutory limitations and exclusions as contained in
24 this article with respect to covered claims. Regardless of whether
25 the self-insured employer or group of employers, or the
26 Self-Insurers' Security Fund, asserts the applicable statutory
27 limitations and exclusions, or whether CIGA intervenes in any
28 such proceeding, CIGA shall be solely responsible for paying all
29 benefits due on the claim, subject to the exclusions and limitations
30 of this article with respect to covered claims. As to each claim
31 subject to this paragraph, notwithstanding any other provision of
32 the Insurance Code or the Labor Code and regardless of whether
33 the amount paid by CIGA is adequate to discharge a claim
34 obligation, neither the self-insured employer, group of employers,
35 nor the Self-Insurers' Security Fund, shall have any obligation to
36 pay benefits over and above the specific or aggregate retention,
37 except as provided in this subdivision.

38 (d) In the event that the benefits paid on the covered claim
39 exceed the per claim limit in paragraph (7) of subdivision (c), the
40 responsibility for paying, adjusting, and defending the claim shall

1 be returned to the permissibly self-insured employer or group of
2 employers, or the Self-Insurers' Security Fund.

3 These provisions shall apply to all pending and future
4 insolvencies. For purposes of this paragraph, a pending insolvency
5 is one involving a company that is currently receiving benefits
6 from the guaranty association.

7 (e) "Admitted to transact insurance in this state" means an
8 insurer possessing a valid certificate of authority issued by the
9 department.

10 (f) "Affiliate" means a person who directly or indirectly, through
11 one or more intermediaries, controls, is controlled by, or is under
12 common control with an insolvent insurer on December 31 of the
13 year next preceding the date the insurer becomes an insolvent
14 insurer.

15 (g) "Control" means the possession, direct or indirect, of the
16 power to direct or cause the direction of the management and
17 policies of a person, whether through the ownership of voting
18 securities, by contract other than a commercial contract for goods
19 or nonmanagement services, or otherwise, unless the power is the
20 result of an official position with or corporate office held by the
21 person. Control is presumed to exist if any person, directly or
22 indirectly, owns, controls, holds with the power to vote, or holds
23 proxies representing, 10 percent or more of the voting securities
24 of any other person. This presumption may be rebutted by showing
25 that control does not in fact exist.

26 (h) "Claimant" means any insured making a first party claim or
27 any person instituting a liability claim; provided that no person
28 who is an affiliate of the insolvent insurer may be a claimant.

29 (i) "Ocean marine insurance" includes marine insurance as
30 defined in Section 103, except for inland marine insurance, as well
31 as any other form of insurance, regardless of the name, label, or
32 marketing designation of the insurance policy, that insures against
33 maritime perils or risks and other related perils or risks, which are
34 usually insured against by traditional marine insurance such as
35 hull and machinery, marine builders' risks, and marine protection
36 and indemnity. Those perils and risks insured against include,
37 without limitation, loss, damage, or expense or legal liability of
38 the insured arising out of or incident to ownership, operation,
39 chartering, maintenance, use, repair, or construction of any vessel,
40 craft or instrumentality in use in ocean or inland waterways,

1 including liability of the insured for personal injury, illness, or
2 death for loss or damage to the property of the insured or another
3 person.

4 (j) “Unearned premium” means that portion of a premium as
5 calculated by the liquidator that had not been earned because of
6 the cancellation of the insolvent insurer’s policy and is that
7 premium remaining for the unexpired term of the insolvent
8 insurer’s policy. “Unearned premium” does not include any amount
9 sought as return of a premium under any policy providing
10 retroactive insurance of a known loss or return of a premium under
11 any retrospectively rated policy or a policy subject to a contingent
12 surcharge or any policy in which the final determination of the
13 premium cost is computed after expiration of the policy and is
14 calculated on the basis of actual loss experience during the policy
15 period.